

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of)
)
TETON COMMUNICATIONS, INC.)
) File Nos. 0000604062, 0000604080
For Private Fixed Microwave Service Stations)
And Requests for Waiver of Section 101.81 of the)
Commission’s Rules)
)

ORDER

Adopted: February 21, 2002

Released: February 25, 2002

By the Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Teton Communications, Inc. (Teton) operates two fixed microwave service (FMS) stations¹ in the 2 GHz band and inadvertently allowed the licenses of the stations to expire.² On September 26, 2001, Teton filed applications for new authorizations to operate the subject stations.³ In connection with its applications, Teton requests a waiver of Section 101.81 of the Commission’s rules that would otherwise result in the authorization of the stations on a secondary basis.⁴ For the reasons stated below, we deny Teton’s Waiver Requests.

II. BACKGROUND

2. The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services, including the personal communications services.⁵ To this end, the Commission has adopted certain transition rules.⁶ In doing so, the Commission balanced the needs of incumbent FMS licensees to continue to operate their systems with the need to conserve vacant 2 GHz spectrum for use by ET licensees and the need to provide ET licensees with a stable environment in which to plan and

¹ The call signs associated with the former licenses were WNEQ858 (Idaho Falls, ID) and WNTI846 (Rexburg, ID). The expiration date for the two stations was April 26, 2001.

² FCC File Nos. 0000604062 and 0000604080 (filed Sept. 26, 2001) (Applications) and associated Waiver Requests (Waiver Requests).

³ See Applications.

⁴ See Waiver Requests.

⁵ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

⁶ See 47 C.F.R. §§ 101.69-101.81. The rules are intended to reaccommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public, and most conducive to the introduction of new services. *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

implement new services⁷ Additionally, in adopting the transition rules, the Commission sought to prevent ET licensees from bearing any additional costs of relocating FMS licensees.⁸ Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, the Commission permits the incumbents to continue to occupy the band on a co-primary basis with the ET licensees for a certain length of time, by the end of which the incumbents are to relocate to other spectrum.⁹ ET licensees have the option, however, of requiring the FMS incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.¹⁰ In addition, we authorize new FMS stations, extensions of existing FMS systems, and major modifications of existing FMS stations only on a secondary basis to ET systems.¹¹ Most minor modifications of FMS stations are also authorized on a secondary basis unless the licensee can demonstrate that it needs primary status and that the modifications will not add to the relocation costs to be paid by the ET licensee.¹² The result is that while incumbent FMS licensees are able to continue operating their systems with primary status – as those systems currently exist – any expansions and most modifications to the systems result in secondary status.

3. Teton failed to file applications for renewal of the licenses for Stations WNTI846 and WNEQ858. Thus, the licenses automatically expired on April 26, 2001. On September 26, 2001, Teton filed applications for new licenses for the subject stations.¹³ Also on September 26, 2001, Teton filed requests for waiver of the Commission's rules that provide that new FMS stations in the 2 GHz band are authorized on a secondary basis to ET licensees.¹⁴

III. DISCUSSION

4. In this case, while the stations at issue were originally authorized with primary status, Teton allowed its licenses to operate the stations to expire. Teton requests a waiver of the rules so that its new licenses for the stations can be accorded primary status. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁵ For the reasons set forth below, we conclude that grant of the requested waiver is not warranted under the circumstances presented.

⁷ *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5, 6891 ¶ 30.

⁸ Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 95-157, 11 FCC Rcd 8825, 8867-69 ¶¶ 86-88 (1996) (*Cost Sharing First Report and Order*).

⁹ 47 C.F.R. §§ 101.69(b), 101.79(a). *See also ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

¹⁰ *See* 47 C.F.R. §§ 101.69(a), 101.71-101.77

¹¹ 47 C.F.R. § 101.81. Secondary operations may not cause interference to operations authorized on a primary basis, e.g., the new ET licensees, and they are not protected from interference from primary operations. *Cost Sharing and First Report and Order*, 11 FCC Rcd at 8869 ¶ 89. Thus, an incumbent operating under a secondary authorization must cease operations if it poses an interference problem to an ET licensee. *Id.*

¹² 47 C.F.R. § 101.81.

¹³ Applications.

¹⁴ Waiver Requests.

¹⁵ 47 C.F.R. § 1.925(b)(3).

5. Significantly, Teton fails to provide any explanation as to why the licenses were allowed to expire, other than to state that its failure was “inadvertent.”¹⁶ Teton also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented.¹⁷ Thus, it appears that the licenses expired as a result of Teton’s negligent failure to renew the licenses in a timely manner. We have previously held that an inadvertent failure to renew a license in a timely manner does not constitute an unique or unusual circumstance that renders application of the 2 GHz band licensing rules inequitable, unduly burdensome, contrary to the public interest, or leaves the applicant with no reasonable alternative.¹⁸ Each licensee bears the exclusive responsibility for filing a timely renewal application.¹⁹ Thus, we find that Teton has failed to make a sufficient demonstration that grant of a waiver is warranted.

IV. CONCLUSION

6. Based on the record in this proceeding, we conclude that Teton has failed to demonstrate that grant of a waiver of Section 101.81 of the Commission’s Rules is warranted under the circumstances presented. We therefore deny its requests for a waiver of Section 101.81 of the Commission’s Rules.²⁰

V. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 and 101.69 of the Commission’s Rules, 47 C.F.R. §§ 1.925, 101.69, the Requests of Teton Communications, Inc., filed September 26, 2001, ARE DENIED.

8. IT IS FURTHERED ORDERED that applications FCC File Nos. 0000604062, 0000604080 SHALL BE REFERRED to the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division for processing consistent with this *Order* and the applicable Commission Rules.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Barry J. Ohlson
Acting Chief, Public Safety and Private Wireless Division

¹⁶ See Waiver Requests.

¹⁷ *Id.*

¹⁸ See, e.g., County of Warren, *Order*, DA 01-2617, ¶ 5 (WTB PSPWD rel. Nov. 13, 2001); Sierra Pacific Power Company, *Order*, 16 FCC Rcd 188, 190-91 ¶ 6 (WTB PSPWD 2001) (*Sierra Pacific*); Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000) (*Plumas-Sierra*); Duke Power Company, *Order*, 14 FCC Rcd 19431, 19434 ¶ 8 (WTB PSPWD 1999) (*Duke Power*).

¹⁹ See Biennial Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 21 (1999) (*ULS MO&O*); Amendment of Parts 1 and 90 of the Commission’s Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

²⁰ We note that this denial affects Teton’s Waiver Request only. Teton’s applications are still pending.

Wireless Telecommunications Bureau